

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JAN 13 2003

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotment;  
FM Broadcast Stations  
(Gonzales, Houma and Westwego, Louisiana,  
and Hattiesburg, Mississippi)

)  
) MB Docket No. 02-295  
) RM - 10580  
)  
)

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division  
Media Bureau

MOTION TO STRIKE

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Stations WUSW(FM), Hattiesburg, Mississippi and KSTE-FM, Houma, Louisiana, by its counsel, hereby moves to strike the "Guaranty Reply to Reply Comments" filed by Guaranty Broadcasting in the above-captioned proceeding on December 13, 2002 (the "Surreply"). The Surreply is unauthorized by any rule or statute, and contains no information that could not have been presented to the Commission earlier. Accordingly, it should be stricken from the record.

I. The *Notice of Proposed Rule Making* (DA 02-2319, rel. Sept. 27, 2002) ("*NPRM*") set a date of November 18, 2002 for comments and December 3, 2002 for reply comments. The Surreply was filed on December 13, 2002. The Commission's rules do not contemplate the filing of pleadings after the time set for reply comments. See 47 C.F.R. § 1.415(d) ("No additional comments may be filed unless specifically requested or authorized by the Commission).") Thus, the Surreply is simply late filed and should be stricken. See *Winslow, Camp Verde, Mayer, and San City West, Arizona*, 15 FCC Rcd 9155 (2000). Furthermore,

Guaranty failed to file a separate motion for leave to file a late reply pursuant to Section 1.415(d) of the Commission's Rules.

2. While the Commission has the discretion to accept late-filed pleadings, it should not exercise that discretion in this instance. As discussed below, the Surreply contains no information that Guaranty could not have presented at an earlier stage in this proceeding. To accept the pleading now would prejudice Clear Channel, the petitioner in this proceeding. *Sur Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990) (affirming Commission policy not to accept late-filed expressions of interest in contested proceedings).

3. Substantively, the Surreply is an attempt to refute Clear Channel's **Tuck** showing regarding the independence of Gonzales from Baton Rouge. *See* Surreply at 6-14 and Exhibits B, C, D, and E.' Guaranty's apparent justification for the late filing is that Guaranty considers Clear Channel's Tuck showing to be "newly submitted" in reply comments. *See* Surreply at 1. However, as Clear Channel made clear in its reply comments, the **Tuck** showing therein was not newly submitted, but was simply a reorganization into the **Tuck** categories of material previously proffered to the Commission in its initial petition.<sup>2</sup> Guaranty had ample opportunity to discuss the evidence of Gonzales' independence from Baton Rouge in comments and reply comments since that evidence was already in the record of this proceeding. Guaranty chose not to do so. It certainly should not be heard to do so now, in violation of the procedural rules, without adequate excuse for its tardiness.

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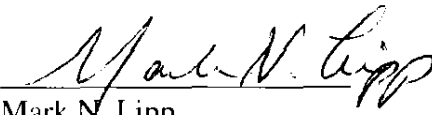
<sup>1</sup> Guaranty also takes this opportunity, although unauthorized, to reply to other aspects of Clear Channel's reply comments. *See* Surreply at 3-6. It goes without saying that these portions of the **Surreply** should be stricken as well.

As set forth in its reply comments, Clear Channel disagrees that a **Tuck showing** is necessary with respect to the reallocation of KSTE-FM from Houma to Gonzales.

WHEREFORE, for the foregoing reasons, Guaranty's Surreply should be stricken from the record of this proceeding without further Consideration

Respectfully submitted,

CLEAR CHANNEL BROADCASTING LICENSES, INC.

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*Its Counsel*

January 13, 2003

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary with the law firm of Shook, Hardy & Bacon, LLP, hereby certify that copies of the foregoing **“Motion to Strike”** were served on this 13th day of January, 2003, via first-class mail, on the following:

\* R. Barthen Gorman  
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Lisa M. Balzer